

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

October 4, 2004

The Rhode Island Ethics Commission held its 14th meeting of 2004 at 9:00 a.m. at the Rhode Island Ethics Commission Conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Monday, October 4, 2004, pursuant to the notice published at the Commission Headquarters and on the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair George E. Weavill, Jr.

Richard E. Kirby* James C. Segovis

James V. Murray* Frederick K. Butler

Francis J. Flanagan

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Commission Education Coordinator; Steven T. Cross, Commission Investigator and Peter J. Mancini, Commission Investigator.

At approximately 9:15 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on September 14, 2004. Upon motion made by Frederick K.

Butler and duly seconded by Francis J. Flanagan, it was unanimously

**VOTED: To approve the minutes of the Open Session held on
September 14, 2004.**

The next order of business was that of advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Robert K. Griffith, a state employee sitting on the Rhode Island Water Resources Board as the designee of the Director of Administration. Commissioner Segovis disclosed that the petitioner had previously worked for his organization, but stated that he would be able to fairly participate. Mr. Griffith indicated that the interpretation set forth in the draft opinion limits an individual's ability to rise in state service. He represented that he exercises general discretion in routine matters but must consult with the Director on matters of finance and policy. He advised that there is no dearth of candidates for the position.

Mr. Griffith noted that the Code contains an exemption from the revolving door prohibition for staff members of state elected officials in the general assembly who have more than 5 years of state service. He asked the Commission to examine his circumstances in the spirit of that exemption. Commissioner Flanagan inquired if the Commission would be impermissibly expanding the regulation by

applying it to a designee. Legal Counsel opined that the Commission could expand the revolving door provision of Regulation 5006 to designees, noting that it previously decided that designees are not subject to financial disclosure. In response to Commissioner Weavill, Mr. Griffith advised that he serves as 1 of 15 Board members. He represented that 3 Board members comprise a Search Committee, 1 of whom also is a designee.

***Commissioner Kirby arrived at 9:34 a.m.**

Mr. Griffith stated that he is not a member of the Search Committee, the members of which were appointed by the Chairperson. He indicated that he is unaware whether the Chair knew he would be a candidate, but the outgoing General Manager encouraged him to apply. In response to Commissioner Segovis, Mr. Gramitt explained that great deference is given to the Commission's interpretation of its own regulations. He noted that in its advisory opinions the Commission has interpreted the revolving door provision to prohibit a town council member from appearing before boards appointed by the council, such as planning and zoning. Mr. Gramitt emphasized that here the petitioner is a long-term designee who exercises discretion.

In response to Commissioner Butler, Legal Counsel advised that it is within the Commission's purview to include designees under the revolving door regulation if it sees fit under these facts. Mr. Griffith

added that the Board employs a small staff and expressed concern regarding a staff member who works closely with the Board applying for the post. Mr. Gramitt clarified that the Board is the ultimate authority and distinguished the petitioner's situation from a staff member seeking advancement. In response to Mr. Griffith characterizing himself as an employee seeking advancement, Mr. Gramitt explained that, while he might be an employee of the department, he sits on the Board as a member. Upon motion made by Frederick K. Butler and duly seconded by Richard E. Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Robert K. Griffith, a state employee sitting on the Rhode Island Water Resources Board as the designee of the Director of Administration.

The next advisory opinion was that of Howard E. Walker, Esq., a member of the Planning Board for the Town of Hopkinton. Mr. Gramitt advised that the matter had been continued so that the Commission could ask questions of the petitioner, but noted that the safe harbor letter had been withdrawn. Mr. Walker represented that he withdrew his partnership with Hinckley Allen and has no further ownership interest in the firm. He stated that he does not share in the firm's income or losses. He explained that he left the firm in April and the firm is paying out his capital account in fixed monthly installments, the last being due in December 2004. Mr. Walker clarified that he has 2 ongoing business activities with the firm. He

advised that he does some contract work for the firm, but has no connection with the firm's income. He also stated that the firm is a client of his, for whom he performs legal services for a fee. He expressed his belief that he is a vendor who does not share a common financial objective with the firm.

Based upon those representations, Mr. Gramitt withdrew the staff's recommendation. He suggested that it would be within the Commission's discretion to determine if the capital account creates a business association, but his legal work for the firm creates a current business association attributable to the partners. He recommended tabling the matter until staff can draft a new opinion or, alternatively, determine if the petitioner wishes to proceed with the request.

***Commissioner Butler recused and left the meeting at 9:51 a.m.**

Commission Kirby expressed that, based on the additional representations, there is a clear business association present. Upon motion made by Richard E. Kirby and duly seconded by Francis J. Flanagan, it was unanimously

VOTED: To table the advisory opinion request of Howard E. Walker, Esq., a member of the Planning Board for the Town of Hopkinton.

***Commissioner Murray arrived at 9:52 a.m.**

***Commissioner Butler returned to the meeting at 9:53 a.m.**

At 9:54 a.m., upon motion made by Frederick K. Butler and duly seconded by Francis J. Flanagan, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), for the discussion of investigative proceedings regarding allegations of misconduct and/or the discussion of litigation, and approval of minutes relating to such discussions, to wit:

a) Motion to approve minutes of Executive Session held on September 14, 2004.

**b) In re: John Celona,
Complaint No. 2003-9**

**c) In re: Gordon Fox,
Complaint No. 2004-7**

At 10:30 a.m., the Commission returned to Open Session and the Chair reported on actions taken. The next order of business was a motion to seal minutes of the Executive Session held on October 4, 2004. Upon motion made by Frederick K. Butler and duly seconded by George E. Weavill, Jr., it was unanimously

VOTED: To seal the minutes of the Executive Session held on October 4, 2004.

The next order of business was a hearing on the Respondent's Motion for Sanctions in the matter of In re: Charles Golden, Complaint No. 2003-10. Legal Counsel and Commissioner Segovis recused and left the meeting. William J. Conley, Jr. was present as Alternate Legal Counsel. Also present were the Respondent and his attorney, Christopher S. Gontarz, Esq., and the Complainant, Russell Hayes. Ms. D'Arezzo advised that the staff does not take a position on the motion and does not participate in the hearing. She explained that the hearing is preliminary and affords both the Complainant and Respondent an opportunity to be heard on the Respondent's motion for reasonable attorney's fees under the Roney amendment. She clarified that the Commission would only rule on the Respondent's motion. If the Commission were to grant it, it would notice a subsequent evidentiary hearing.

Attorney Gontarz argued that an individual's first amendment rights are not unlimited and referenced the recent RI Supreme Court decision in Alves v. Hometown Newspaper, which found that attorney's fees were constitutional where statements made were malicious and groundless in a SLAPP suit. He noted that, while mandatory in the SLAPP suit context, the Commission's award of attorney's fees is discretionary. Attorney Gontarz argued that the Complaint as filed brought out facts relating to personal issues

affecting the Respondent, members of his family and a female police officer. He represented that if the matter were to proceed to an evidentiary hearing Commission Investigator Mancini would testify that he told Mr. Hayes not to include the salacious material in the Complaint. He noted that the Commission had never before had to redact material from a Complaint and indicated that the Complaint itself was based on malice.

Mr. Hayes replied that he did not believe Investigator Mancini told him not to file the Complaint. He advised that he never brought up it being malicious, false or groundless. He represented that he researched the Complaint and obtained information from the Commission web site. He noted that nothing in his Complaint related to any financial component because, as he read the Code, it was not required. Mr. Hayes emphasized that no “Chinese Wall” had been established, as required in Commission advisory opinions. He informed that, even after 5 recent communications with City Hall, he has not been able to obtain the public document establishing an alternate chain of command, despite the fact that he is Chief Golden’s brother’s supervising officer. Mr. Hayes added that the Commission did not strike the Complaint down as frivolous. He stated that, as recent as Friday, the Chief’s brother received financial increases based upon his certification as a CSI officer.

Mr. Hayes indicated that Attorney Gontarz did not raise the frivolous defense until a late stage of proceedings, after the

Commission found probable cause. He stated that the Complaint passed through checks and balances before the Commission and the frivolous issue was never raised. He noted that the Complaint was dismissed based upon a legal technicality after the Commission reviewed it several times and found probable cause. He suggested that an award of attorney's fees would have a chilling effect on those who would come forward with allegations. Attorney Gontarz clarified that the issue of frivolity was raised in the original and supplemental Answers filed.

In response to Commissioner Kirby, Mr. Hayes advised that he could not obtain a public document from City Hall that spells out the alternate chain of command in place with regard to the Chief's brother. He indicated that he previously read in the newspaper that such a document exists and is in the Commission's possession. In response to Commissioner Weavill, Mr. Hayes informed that he filed the Complaint as an individual and did not go to the union or seek union counsel. In response to Commissioner Kirby, Mr. Hayes stated that he had drafted the portions of the Complaint, which the Commission previously redacted. He explained that, after personally speaking with the Chief's brother, he contacted Investigator Mancini and asked to withdraw that portion of the Complaint. He advised that he believes that portion is still provable, but asked that it be dismissed. Mr. Hayes acknowledges that he made his request at or about the same time the Chief filed a motion to redact.

Commissioner Flanagan expressed his opinion that the Commission did the right thing in redacting the Complaint, but also understood why the Chief is pursuing sanctions. He noted that, in retrospect, the language used in the original Complaint was unkind and involved family members. He noted that a citizen does have a right to bring a Complaint, even if poorly worded or mean-spirited. He stated that there was a reason why the Complaint went forward, but suggested that there had been a fair result. Commissioner Flanagan commented that the Complainant did try to take out the language at issue. Commissioner Kirby stated that the Complaint was initially determined, thoroughly investigated and, after the Commission engaged in much discussion regarding financial benefit, no probable cause was found. He echoed Commissioner Flanagan's view that citizens have a right to file Complaints and indicated that he would not feel comfortable awarding attorney's fees. He also noted that Mr. Hayes tried to withdraw the subject portion and felt sorry about it.

Legal Counsel advised that the issue before them is limited to a determination whether to schedule the matter for an evidentiary hearing to determine if there had been a reasonable pre-Complaint inquiry into the facts and law. Chair Lynch concurred with Commissioner Flanagan and stated that he does not want this to have a chilling effect. He opined that, whether or not the information contained in the Complaint was accurate, it should not have been included. Upon motion made by George E. Weavill, Jr. and duly

seconded by Richard E. Kirby, it was unanimously

VOTED: To deny the Respondent's Motion for Sanctions.

The next order of business was the Director's Report. Mr. Willever informed that the staff has advertised 4 vacant posts and the application and selection process is underway. He reported that he would be on the Search Committee. He represented that advisory opinions are current, but requests have increased. He advised that 14 Complaints are pending, and the staff has responded to increasing requests for education generated by media coverage and the upcoming elections.

At 11:05 a.m., upon motion made by Richard E. Kirby and duly seconded by Francis J. Flanagan, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

Robin L. Main

Secretary